

Police Dep't v. Bull

OATH Index No. 2231/21, mem. dec. (July 14, 2021)

Petitioner failed to establish its entitlement to retain vehicle where it failed to demonstrate that it served the registered owner with notice of the right to request a retention hearing at the time of the seizure or by mail within five business days after the seizure. Vehicle ordered released.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
POLICE DEPARTMENT
Petitioner
- against -
WILLIAM BULL
Respondent

MEMORANDUM DECISION

JULIA H. LEE, *Administrative Law Judge*

Petitioner, the Police Department (“Petitioner,” “NYPD,” or the “Department”), brought this proceeding to determine its right to retain a vehicle seized as the alleged instrumentality of a crime pursuant to section 14-140 of the Administrative Code. Respondent William Bull is the registered owner and driver of the seized vehicle (Pet. Ex. 12). This proceeding is mandated by *Krimstock v. Kelly*, 99 Civ. 12041, 2007 U.S. Dist. Lexis 82612, third amended order and judgment (S.D.N.Y. Sept. 27, 2007) (the “*Krimstock Order*”). *See generally Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002), *cert. denied*, 539 U.S. 969 (2003); *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003).

On January 3, 2021, petitioner seized respondent’s vehicle, a 2017 Chevrolet Camaro (Property Clerk Invoice No. 3001298630), following his arrest for criminal possession of a weapon in the second degree and other charges (Pet. Exs. 4, 11). Petitioner received respondent’s demand for a hearing and scheduled it for June 22, 2021, at this tribunal (Pet. Exs. 1, 2). At respondent’s request, the matter was rescheduled for July 9, 2021.

At the proceeding on July 9, 2021, which was held remotely by videoconference due to the COVID-19 pandemic, petitioner relied on documentary evidence and respondent, represented by counsel, testified for the limited purpose to show that he did not receive notice; that the release of his vehicle was not a risk to the public; and that the loss of his vehicle was a hardship. With respect to his pending criminal charges, respondent invoked the Fifth Amendment and offered no evidence.

For the reasons below, petitioner is ordered to release respondent's vehicle.

ANALYSIS

Petitioner seeks to retain the vehicle as the instrumentality of a crime. To prevail, it was required to prove by a preponderance of the evidence: (i) that probable cause existed for the arrest resulting in the vehicle's seizure; (ii) it is likely to prevail in a civil action for forfeiture of the vehicle; and (iii) that it is necessary that the vehicle remain impounded to ensure its availability for a judgment of forfeiture. *Krimstock* Order ¶ 3; *Canavan*, 1 N.Y.3d at 144-45. Due process requires an "initial testing of the merits of the City's case," not "exhaustive evidentiary battles that might threaten to duplicate the eventual forfeiture hearing." *Krimstock*, 306 F.3d at 69-70; *Canavan*, 1 N.Y.3d at 144 n.3. Thus, petitioner may rely on hearsay. *Krimstock* Order ¶ 3; *see also* 48 RCNY § 1-46 (Lexis 2021).

As a preliminary matter, respondent argued that petitioner failed to comply with the *Krimstock* Order's notice requirement, which specifies that:

Notice of the right to a hearing will be provided at the time of seizure by attaching to the [Property Clerk's] voucher already provided to the person from whom a vehicle is seized a notice, in English and Spanish, as set forth below. A copy of which notice will also be sent by mail to the registered and/or titled owner of the vehicle within five business days after the seizure.

Krimstock Order, ¶ 4. The *Krimstock* Order's imposition of a dual notice requirement is not "an empty formality." *Police Dep't v. Davis*, OATH Index No. 1297/15, mem. dec. at 2 (Dec. 26, 2014) (*citing Police Dep't v. Ruiz*, OATH Index No. 1440/07, mem. dec. at 3 (Mar. 27, 2007); *see also Police Dep't v. Carino*, OATH Index No. 541/12, mem. dec. at 2 (Oct. 6, 2011)). Rather, the notice requirement is designed "to afford car owners rapid, truncated, preliminary, administrative hearings concerning the retention of their vehicles by the police pending the

outcome of a more plenary civil forfeiture action.” *Police Dep’t v. Williams*, OATH Index No. 1759/07, mem. dec. at 4 (Apr. 12, 2007). “When challenged, the Department must show that it strictly complied with its notice obligations.” *Police Dep’t v. Brooks*, OATH Index No. 1745/13, mem. dec. at 2 (Mar. 29, 2013) (citing *Police Dep’t v. Harris*, OATH Index No. 1607/13, mem. dec. at 3 (Mar. 14, 2013)). Failure to comply with the dual notice requirements requires return of the vehicle to the claimant. See *Police Dep’t v. Coulanges*, OATH Index No. 2494/19, mem. dec. at 5 (June 14, 2019).

Respondent testified that he never received timely notice of his right to a retention hearing, in person or by mail. Instead, respondent claimed that he first learned of his right to request a vehicle retention hearing in June, five months after his arrest, after receiving a vehicle release notice from the District Attorney. This prompted him to go directly to the impound lot to retrieve his car. At the impound lot, he was then informed that he needed to request a vehicle retention hearing by completing and sending the form, which he did after first forwarding the notice to his counsel.

The Department contends that it served respondent with the notice by submitting its copy of the Vehicle Seizure Form prepared by Police Officer McGuirewright, the arresting officer (Pet. Ex. 15). On the form, respondent’s name and the make and model of the vehicle are handwritten while the “Acknowledgment of Service” section is blank, with a horizontal line in lieu of defendant’s signature and the “defendant refused signature” box is checked (Pet. Ex. 15). According to the Department’s counsel, this form is presumptive evidence that respondent was served with notice at the time of his arrest.

Based upon a review of the evidence, I find that petitioner failed to adequately prove its compliance with the Krimstock dual notice requirement. Although this tribunal has found sufficient evidence of personal service based on documentary evidence, such as a vehicle seizure form, I find that respondent’s testimony supported by his actions were more persuasive than petitioner’s documentary evidence. See *Police Dep’t v. Alvarenga*, OATH Index No. 1527/21, mem. dec. at 3 (Mar. 22, 2021) (finding lack of proper service of *Krimstock* notice based on unsupported vehicle seizure form); *Brooks*, OATH 1745/13, mem. dec. at 4 (crediting respondent’s testimony over vehicle seizure form).

Respondent credibly testified to receiving vouchers for his personal belongings such as earrings and cash as well as some items from his vehicle but did not receive any notices regarding his vehicle. When he inquired about his vehicle, respondent was informed that the vehicle was being held as evidence. As a result, respondent testified that he rented a car until it became too expensive to do so and that the loss of his vehicle was a personal hardship for him that affected his ability to work and see his son in Delaware. Respondent further testified that only after receiving the release from the District Attorney in June, five months after his arrest, and going to the impound lot to retrieve his car, was he informed of his right to a retention hearing, which he then pursued by completing and submitting the form. Respondent received the District Attorney release statement, went to the impound to retrieve his car, submitted the notice for a hearing, and had his retention hearing scheduled, all in the same month (Pet. Exs. 1, 2).

Respondent's testimony is further supported by the Department's failure to proffer any evidence to show that respondent received the notice by mail within five business days of his arrest. Indeed, respondent's prompt actions to retrieve his car after receiving the District Attorney's release demonstrate that had he received timely and actual notice of his right to request a retention hearing, he would not have waited five months to request a hearing or paid money to rent a car. *See e.g., Coulanges*, OATH 2494/19, mem. dec. at 4 ("Respondent's efforts to locate and retrieve his vehicle supports his testimony that the Department failed to properly notify him of his right to a retention hearing at the time of his arrest as required under the *Krimstock* Order"); *Police Dep't v. Cuervo*, OATH Index No. 633/18, mem. dec. at 6-7 (Oct. 27, 2017) (release of car ordered due to petitioner's failure to properly serve proper notice in person at the time of the seizure or by mail); *Davis*, OATH 1297/15, mem. dec. at 4-5 (crediting respondent's actions to retrieve car to support a finding that he was not properly served with *Krimstock* notice); *Police Dep't v. Douguengar*, OATH Index No. 2690/10, mem. dec. at 3 (May 26, 2010) (crediting vehicle owner's testimony regarding lack of service of *Krimstock* notice, where testimony was supported by emails and other documents).

In sum, the Department has failed to establish proof of service of the notice of right to a hearing retention at the time of seizure and within five business days after the seizure. Failure to meet the *Krimstock* notice requirements requires release of the vehicle.

ORDER

The Department failed to comply with the notice requirements of the *Krimstock* Order. Accordingly, it is ordered to release respondent's vehicle.

Julia H. Lee
Administrative Law Judge

July 14, 2021

APPEARANCES:

JASON KRAWITZ, ESQ.
Attorney for Petitioner

THE LEGAL AID SOCIETY
Attorneys for Respondent
BY: TAYLOR SHANN, ESQ.